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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 316

JOSEPH MITCHELL,

Appellant,

vs.

CONSERVATIVE HOMESTEAD ASSOCIATION.

APPEAL FROM THE SUPREME COURT OF THE STATE OF LOUISIANA.

STATEMENT AS TO JURISDICTION.

ARTHUR B. LEOPOLD,
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Pursuant to Rule 12, paragraph 1, of the rules of the Supreme Court of the United States, Joseph Mitchell, applicant for appeal herein, files this his statement showing the basis upon which he contends the Supreme Court of the United States has jurisdiction upon appeal to review the judgment and decree of the Supreme Court of the State of Louisiana herein:

This is an appeal from a judgment or decree of the Supreme Court of the State of Louisiana, the highest court in such State in which a decision in this case could be had;

and in this suit there was drawn in question the validity of a statute of Louisiana on the grounds of its being repugnant to the Constitution of the United States, and the decision is in favor of its validity.

(a) The statutes believed to sustain appellate jurisdiction are Section 237 (a) of the Judicial Code, as amended by Act of Congress of February 13, 1925, and Act of Congress of January 31, 1928, chapter 14, 45 Stat. 54, providing:

> "Sec. 237 (a). A final judgment or decree in any suit in the highest court of a State in which a decision in the suit could be had * * * where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution * * * of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error."
>
> Act of January 31, 1928: "All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal * * * the review of judgments of State courts of last resort shall be petitioned for and allowed in the same form as is now provided by law for writs of error to such courts."

(b) The statute of the State of Louisiana the validity of which is involved is Act No. 140 of the Legislative Acts of Louisiana for the year 1932, approved July 12, 1932, and known and cited officially as "Louisiana Homestead and Building and Loan Statute", appearing in the official acts of the "Acts Passed by the Legislature of the State of Louisiana at the Regular Session of 1932", at page 454 *et seq.*

The parts of the above statute, the validity of which is involved, are Sections fifty-three (53), fifty-four (54), fifty-five (55) and fifty-six (56), found in said official edition at pages 476 *et seq.*

These sections are here quoted:

"Section 53. Members may withdraw full paid withdrawable shares, or part or all of the sum paid in on account of their unpledged installment or other shares, by filing notice in writing at the office of the Association, and if the funds therefore are available as hereinafter set forth, shall receive the amount so withdrawn, together with all dividends declared thereon or earnings allocated thereto previous to the date of the filing of said application with the association, or if it be payments on account of shares, all dividends thereon declared and payable prior to date of said filing; less such percentage of allocated earnings as may be retained on account of withdrawing or surrendering serial stock before its maturity in accordance with any charter or by-law and less any unpaid charges and a pro rata share of any losses, prior to the date of the filing of said application, in excess of the amount in the Contingent Loss Account. Whenever an allowance is made to members on the withdrawal list as authorized by Section 55 of the present statute, any withdrawing member, who accepts said allowance, must bear his proportion of all losses and charges up to the time of the final payment to him in respect of his said application. Whenever the Supervisor takes charge of any association, or in the event of merger, consolidation, or liquidation, the withdrawal list shall be cancelled.

"Before making any appropriation of the receipts which may be applied to the liquidation of the claims of withdrawing members, a homestead and building and loan association may, in the discretion of its board of directors, make use of such receipts and funds as are needed for all operating expenses, and the maintenance and improvement of all repossessed property, the payment or renewal of obligations, and the creation of cash reserves needed for the declaration of dividends.

"Section 54. Notices of withdrawal shall be made in writing and shall be registered in the order of their receipt, and whenever the proportion of receipts ordi-

narily made applicable to the demands of withdrawing members is not sufficient to pay all such demands within sixty days from the date of application for withdrawal, applications for withdrawals shall be paid out of funds available as hereinafter set forth and shall be liquidated as follows: The applicant first on the list will receive twenty-five per cent of the amount of his application for withdrawal, but in no case less than five hundred dollars, on account, if the funds are available as hereinafter set forth, or if the amount of his application is for less than five hundred dollars, and funds to pay the same are available as hereinafter set forth, his application shall be liquidated in full. For any balance remaining due to the applicant after the aforesaid payment the application shall be transferred at once to the bottom of the withdrawal list, and no further payments shall be made to said applicant (except as hereinafter set forth) until the said applicant's name has again found its way to the head of the withdrawal list. The second applicant shall be treated in exactly the same manner, and so on. All new applicants shall be placed at the bottom of the list, immediately upon the filing of their respective applications. This method of paying withdrawals shall become obligatory upon all associations when the present statute goes into effect; and the withdrawal list as then existing in each association shall be liquidated from that date as provided in the present statute. In addition to the above, the association may use its discretion in meeting on demand at all times all applications for withdrawals by members whose entire interest in the association amounts to less than one hundred dollars; and may further, in its discretion, pay the sum of not more than one hundred dollars, per month, to any applicant on the withdrawal list. Provided that such payments of one hundred dollars per month shall be made only when emergent circumstances justify the same and only after a thorough investigation of each application has been made. Such applications should be in writing and kept on file in the association's office. The board of directors shall have

full authority to prescribe such rules as may in its discretion be suitable to prevent shareholders from making any simulated or otherwise improper transfer of shares in order to appear more than once on the withdrawal list, and all rules thus made shall be binding on the members of the association. Whenever the amount of withdrawals exceeds sixty per cent of the accumulated capital of any association, the State Bank Commissioner and Supervisor of Homestead and Building and Loan Associations, if he believes that the condition of the association justifies such an order, may direct that the payment of withdrawals as above provided be discontinued, and that thereafter all withdrawals from said association be paid on a pro-rata basis, from time to time, to all persons appearing on the withdrawal list of said association. Said distribution to be made to all persons actually on the withdrawal list on a date not less than ten days previous to the day on which the pro rata distribution checks are issued.

"At their maturities, installment shares which have a fixed maturity and on account of which no installments have been delinquent for more than one year for a period of time exceeding seven years, shall be preferred over all shares on the withdrawal list; and, at such maturities, no other shares on the withdrawal list shall be cashed until said installment shares have been paid.

"Section 55. A member who has served notice of his intention to withdraw remains a shareholder, but shall have the status of, and be classified as, a withdrawing member; and his rights and privileges are prescribed, limited and defined exclusively by the provisions and restrictions of the present statute. Except as stated in Section 53, no liabilities or losses as of a date subsequent to the time of the filing of his notice of withdrawal shall be chargeable or assessable against his shares; and from the date of said application and as long as his application for withdrawal has not been withdrawn, he shall not be entitled, except as hereinafter set forth, to any benefit on his shares beyond the

collection of the face value thereof, nor to allowance or dividend in the distribution of the accumulated or current profits or earnings. No suit shall be instituted by a withdrawing shareholder against an association, its officers or representatives, except for a violation of the provisions of the present Statute, or to enforce compliance with said provisions. For such purpose and not otherwise, such a withdrawing shareholder shall be entitled, under such reasonable rules as the association may prescribe, to inspect the books and records of the association.

"However, in its discretion, the board of directors may, from time to time, prescribe and grant and order the payment of an allowance on the amount of unpaid withdrawals under such terms and conditions as to amount of individual withdrawals or period of time on the withdrawal list, or otherwise, as the board may determine and prescribe; but the rate of allowance which may be thus paid shall never exceed sixty per cent (60%) of the rate of dividend currently and actually paid in cash on the shares of continuing members; and such allowance may be discontinued by the board in its discretion, at any time or under any conditions, especially without affecting the right to continue to pay dividends on the shares of continuing members.

"Section 56. The attribution to be made from receipts or other assets whatsoever for the payment of withdrawals shall, at all times, be under the sole control and administration of the board of directors, which, in its discretion, shall determine, from time to time, the amount or amounts to be used for the payment of said withdrawals; and the provisions of all laws formerly existing as to the setting aside of a definite segment of revenues for such purposes are now superseded by the present statute with the same effect as if the same had been conventionally waived by all present shareholders and as part of the subscriptions of all future subscribers to or holders of shares.

"The existence of a withdrawal list shall not prevent the making of new loans to new or continuing mem-

bers, provided that, when there is a withdrawal list, not more than twenty-five per cent of the gross receipts shall be used for the making of loans. Notwithstanding the existence of a withdrawal list, the board, as long as there are debts due by the association, may use all or any part of the funds and current receipts for the payment of such debts, no matter at what time or under what circumstances incurred, as well as for the payment of all operating expenses and all other expenses incidental to the doing of business; and dividends, in such amounts and at such rates as may be considered proper by the board may be declared by said board out of the earnings or undivided profits, for the benefit of the continuing members, although there is a list of unpaid withdrawals."

(c) The decree or judgment of the Supreme Court of the State of Louisiana herein sought to be reviewed was entered on March 4, 1935, and a rehearing was denied April 1, 1935. Said judgment or decree is not yet officially reported, but is unofficially reported in Southern Reporter advance sheets, dated May 16, 1935, Vol. 160, No. 5, page 648 *et seq.* This application for appeal to review said judgment is presented for allowance on this 21st day of June, 1935.

(d) The record shows that:

Applicant for appeal, Joseph Mitchell, owns $10,000 paid up capital stock of Conservative Homestead Association acquired by him prior to May 30, 1931, and on May 30, 1931, in accordance with Charter and By-laws of the said Homestead Association and with Section 7 of Act No. 120 for the year 1902 as reenacted by Act 280 of 1916, of the Legislative Acts of the State of Louisiana, he applied to the said association to withdraw and notified said association of his intention to withdraw the amount of his said stock holdings invested in said association.

The said provisions of the charter and by-laws of the

Conservative Homestead Association and of Section 7 of Act No. 120 for the year 1902 as reenacted by Act No. 280 for the year 1916 of the Legislative Acts of Louisiana are as follows:

Charter, Art. IV:

"Shareholders shall have the right to withdraw from the Association the amount paid in, together with the accumulated profits due thereon at the preceding dividend time, less any charges and proportion of losses, if any, upon filing written notices of withdrawal, which shall be registered by the Secretary in the order of their receipt, and withdrawing shareholders shall be paid in rotation, as registered, out of the first unappropriated money in the treasury. Provided, that not more than half the monthly receipts shall ever be used for the purpose of liquidating matured, withdrawn or paid-up stock shares unless there should be an over-accumulation of funds which cannot be loaned in the usual manner upon real estate."

By-laws, Sec. IV:

"Paid-up stock shall be issued subject to the following terms and conditions:

"1. Dividends are payable in cash semi-annually.

"2. This stock may be withdrawn at any time by giving written notice to the Association, and such notice of withdrawal shall be registered in the order received in the same manner as withdrawals of current shares and shall be paid in order out of any unappropriated money in the treasury, provided that not more than half the monthly receipts of the Association shall be used in payment of withdrawals. The holder will receive the face value of the stock, together with all dividends declared thereon which have not been previously withdrawn, less a pro rata share of losses, if any, in excess of the amount in the contingent fund of the Association."

Section 7 of Act No. 120 of Louisiana for the year 1902, as reenacted by Act No. 280 of 1916:

> "Section 7. Be it further enacted, etc., That a member may withdraw his shares or credits thereon at any time by giving written notice of such intention and shall then be entitled to receive the amount paid in by him, and such proportion of the profits as the act of incorporation or by-laws may prescribe, less all fines, charges, expenses and losses accrued or contingent to the time of notice of withdrawal, as the board of directors may determine.
>
> "Each association shall keep a register of notices of withdrawal in the order in which they are filed, giving dates of notices and amounts to be withdrawn, and shall pay the same in the order in which such notices of intention to withdraw were filed. Whenever the proportion of receipts ordinarily made applicable to the demands of withdrawing members by resolution of the board of directors is not sufficient to pay all such demands within sixty days from date of notice, one-half of its receipts shall thereafter be applied to the liquidation of the claims of withdrawing members until all deferred claims are paid."

More than sixty (60) days elapsed after applicant had given notice of his intention to withdraw, and nothing had been paid him on account of such withdrawal.

On July 12, 1932, the Louisiana Statute Act 140 of 1932, the validity of which is involved herein, was approved.

Applicant thereupon, on October 25, 1932, brought suit against the said Conservative Homestead Association to have the said Sections 53, 54, 55 and 56 of said Act 140 of 1932 declared unconstitutional as repugnant to the Constitution of the United States, Article I, Section 10, and Amendment XIV, Section 1, in that said sections of said statute impair the obligations of applicant's contract with said Homestead Association to allocate 50% of its net re-

ceipts to pay withdrawals until applicant was paid, and to pay applicant in full in his turn when he reached the top of the withdrawal list; and also in that said sections of said statute deprive applicant of his property without due process of law.

The Supreme Court of Louisiana ruled that contract obligations were impaired and vested property rights divested by the said Louisiana statute, but that the same was justified as a reasonable exercise of police power and was therefore constitutional.

The Supreme Court of Louisiana was divided on the question of repugnancy *vel non* of the Louisiana statute to the Federal Constitution.

(e) The following are cases believed to sustain the jurisdiction:

Kansas City Southern Ry. Co. v. *Road Improvement District No. 3*, 266 U. S. 379, 386; 69 L. Ed. 335.

Milheim v. *Moffatt Tunnel Improvement District*, 262 U. S. 710, 717; 67 L. Ed. 1194, 1199.

Louisville & N. R. Co. v. *Melton*, 218 U. S. 36, 49; 54 L. Ed. 921.

American Sugar Ref. Co. v. *State of Louisiana*, 179 U. S. 89, 91; 45 L. Ed. 102.

Respectfully submitted,

(Sgd.) ARTHUR B. LEOPOLD,
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June 21, 1935.